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EYES ONLY

OGC 68-0592

24 April 1968

MEMORANDUM FOR: Deputy Director for Support

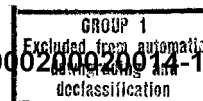
**SUBJECT: Proposal for Incentive Compensation
for Early Retirement**

1. You have asked me to review the Reserve Corps/Early Retirement Proposal, dated 1 April 1968, by which incentives for early retirement in the form of supplementary compensation would take the form of appointment to an Agency reserve corps upon retirement.
2. The basic legal problem would appear to be the requirement of steering a course between a termination bonus supplementary to a retiree's annuity, which has been declared illegal by the Comptroller General, and establishment of a bona fide reserve component of the Agency, members of which are appointed officers of the government in an employer-employee relationship and, therefore, re-employed annuitants at the outset of retirement.
3. Certainly the rationale developed in the 1 April draft could be supported legally, that is, that the Agency in time of national emergency would necessarily be required to turn to former employees whose specialized training and experience would give them the ability to contribute to the expanding intelligence program required by the emergency. However, care must be exercised in the development of standards by which the Agency will guarantee the availability of this emergency manpower pool. If retired status rather than former employment is required for participation in this reserve pool, the program would appear to be intended to supplement the Agency's two retirement systems rather than accomplish the purpose set forth above. In other words, it would become patently apparent that we are attempting to accomplish indirectly what cannot be accomplished directly. Moreover, if compensation is paid to these former employees, it should be based in part at least upon their

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willingness to make themselves available in time of crisis, irrespective of their employment status elsewhere. It would be natural to make this compensation greater for the recent resignee/retiree than for one who had been away from the Agency for a number of years. Therefore, the concept of higher pay in the first year with decreasing pay thereafter could be supported legally. Finally, the former employee participating in this program should be required to contract for this availability with agreement that he will reimburse the Government if he should be called and does not respond to that call. Of course, there should be provision that he may at any time serve notice upon the Agency, removing himself from the reserve list without penalty.

4. In view of the above, you may wish to consider the following: an Agency reserve manpower pool composed of former Agency employees, who may or may not be retired from the Agency, who have contracted to hold themselves available for immediate recall to active Agency duty at any time that the Director should require in the interest of national security. Such personnel while in this standby status would be compensated without reference to any other payments made by the Federal Government, such as, retirement annuities except for setting forth any maxima as required by law. Such personnel could become members of the pool after application by them and selection by a board of Agency officials. The selection could be made either before or after the employee has left active service with the Agency. Some of the criteria for payment should be length of service, his level of employment, and the degree of specialization. Selection into this program might be based upon these same criteria plus age.

5. If age is to be a criteria for selection into the program, our preference, as regards retirees under either the CIARS or CSRS, is that this criteria be the same with no set distinction between the two systems. The advice and guidance of this Office should be sought in the development of these criteria and standards, wherein consideration could be given to potential dual compensation and conflict of interest problems. Finally, in view of the rather critical legal problems involved, I would suggest, if such a board were formed, that the Office of General Counsel be represented.

SIGNED

LAWRENCE R. HOUSTON
General Counsel

cc: SA-DD/S

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